

Pham, Christopher

From: Fleming, Terrence
Sent: Thursday, April 04, 2019 6:33 PM
To: Heather Kliebenstein; Pham, Christopher; Janus, Leah
Cc: Allen Hinderaker
Subject: RE: Redesignation of FED017912

With regard to the designation issue, my client has been considering your request. As this information is commercially sensitive, it had to be reviewed at high levels. The information remains sensitive and thus Chubb does not want to de-designate it for all purposes. Presuming there is a legitimate litigation-related need, however, Chubb would agree to allow Bill Waid (or one internal business person at FICO) to view it. However the other AEO restrictions should apply, in that it should not be filed in the public court file, etc. If it needs to be used in this case down the road we can figure out a work-around or reconsider the issue as is commonly done in such matters.

If this is satisfactory please let me know.

From: Heather Kliebenstein [mailto:HKliebenstein@merchantgould.com]
Sent: Thursday, April 04, 2019 10:38 AM
To: Fleming, Terrence; Pham, Christopher; Janus, Leah
Cc: Allen Hinderaker
Subject: Redesignation of FED017912
Importance: High

Counsel, reminder requesting a position on FED017912.

Thanks,

Heather

From: Heather Kliebenstein
Sent: Wednesday, April 3, 2019 11:17 AM
To: Fleming, Terrence <TFleming@fredlaw.com>
Cc: 'Pham, Christopher' <CPham@fredlaw.com>; Janus, Leah <LJanus@fredlaw.com>; Michael Erbele <MErbele@MerchantGould.com>; Allen Hinderaker <AHinderaker@merchantgould.com>; '15081.0008USZA.active@ef.merchantgould.com' <15081.0008usza.active@ef.merchantgould.com>
Subject: FW: FICO v. Federal, et al.

Terry, let's schedule a time to talk about these issues in view of the testimony yesterday. Here are my general thoughts.

1. On the M&A issue, our offer is to review the files relating to the M&A events identified in our supplemental response to Interrogatory No. 20. You received some testimony on how that process would work yesterday. This search would be in response to Doc. Req. Nos. 20, 21, 25 and 46. Let me know if you would like to discuss that process today or Friday. I am speaking at a conference tomorrow but could fit in a short call. Friday is open.
2. On the discount issue, you received testimony from Mr. Waid yesterday on discounts. Mr. Waid's testimony provides you with the information requested in RFP 48-49 (the manner in which FICO determines discounts; factors considered in determining discounts). FICO does not maintain a list of discounts that would be



responsive to RFP 50, and we do not believe it is reasonable to search all FICO records (emails, documents, etc) for all Blaze Advisor negotiations in the hopes of finding random documentation of specific discount rates. As Mr. Waid testified, many discussions around discounts were verbal. In many instances, the final agreements reflect the discounts provided. Our position is that you have complete testimony to explain the discounting process at FICO and you also have all relevant, responsive documents that exist pursuant to a reasonable search on this topic.

3. On the audit issue, are you asking me to amend our response to RFP 47 to expressly state “no documents exist”? RFP 47 asks for “all documents” about any audit at any time of any licensee for any FICO product. I can’t confirm no documents exist because the search request is unreasonable and not relevant. Are you amending RFP 47 so that it only refers to Federal? You have several deposition transcripts that confirm FICO did not audit Federal prior to the 2016 negotiations. Carretta’s 30(b)(6) on the topic should be comprehensive. Let me know if there is really a live issue here after you review the Carretta transcript.

On Friday, you asked me what was the pricing document referenced in Mr. Waid’s first deposition at p. 12. That document is Dep. Ex. No. 421—the 2003 Global Price List.

Finally, I raise my request to de-designate FED017912 again. I have asked 4-5 times over 2 weeks. I provided Leah similar permission as a professional courtesy the same day she requested it several weeks back. I did not even ask her why she needed the document de-designated, again as a professional courtesy to not try to invade her work product. This document is nearly identical to the documentation provided to Mr. Waid in connection with the December settlement conference. I don’t want to move the court about this issue, but Friday is our deadline to do so. **Please notify me by end of day of your decision.**

Heather

From: Pham, Christopher <CPham@fredlaw.com>

Sent: Friday, March 29, 2019 4:44 PM

To: Allen Hinderaker <AHinderaker@merchantgould.com>; Heather Kliebenstein <HKliebenstein@merchantgould.com>; Michael Erbele <MErbele@MerchantGould.com>

Cc: Fleming, Terrence <TFleming@fredlaw.com>; Janus, Leah <LJanus@fredlaw.com>

Subject: FICO v. Federal, et al.

CAUTION - External.

Counsel,

Please find attached correspondence regarding the above-referenced matter.

Thanks,

Fredrikson
S. BYRON, P.A.

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Pham, Christopher

From: Heather Kliebenstein <HKliebenstein@merchantgould.com>
Sent: Tuesday, April 30, 2019 3:31 PM
To: Pham, Christopher; Allen Hinderaker; Michael Erbele
Cc: Janus, Leah; Hokans, Christian; Fleming, Terrence;
'15081.0008USZA.active@ef.merchantgould.com'
Subject: RE: FICO v. Federal - Expert Discovery

Follow Up Flag: Follow up
Flag Status: Flagged

Chris,

For the reasons set forth in our April 5 motion to strike, we object to using any information from Harkin on motion, at a hearing, or at trial. As a result, we do not consent to Federal discussing FICO's expert reports with Mr. Harkin.

Further, we are in the process of receiving/producing the financial filings referenced in Schedule 2 of the Stoneturn report, as requested last Friday, April 26.

Best,

Heather

From: Pham, Christopher <CPham@fredlaw.com>
Sent: Tuesday, April 30, 2019 10:55 AM
To: Heather Kliebenstein <HKliebenstein@merchantgould.com>; Allen Hinderaker <AHinderaker@merchantgould.com>; Michael Erbele <MErbele@MerchantGould.com>
Cc: Janus, Leah <LJanus@fredlaw.com>; Hokans, Christian <CHokans@fredlaw.com>; Fleming, Terrence <TFleming@fredlaw.com>
Subject: FICO v. Federal - Expert Discovery

CAUTION - External.

Counsel,

Thanks for sending over the deposition availability for FICO's experts. We will review the dates with our client and get back to you.

Federal's experts are available as follows:

- Billy McCarter is available the week of May 27, June 3, and June 17.
- Steven Kursh is available the week of June 24.
- Chris Bakewell is checking his availability and we will follow up with dates ASAP.

In addition, we respectfully request permission to discuss FICO's expert reports with Kevin Harkin. As you know, Federal's expert reports are due May 17, 2019, and therefore, a response to this request by the end of the day would be greatly appreciated. We appreciate your professional courtesy in providing a timely request.

Thank you,





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